

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Agency for Persons with Disabilities**

RULE NOS.:	RULE TITLES:
65G-4.014	Eligibility for Services
65G-4.015	Eligibility Criteria
65G-4.016	Application Process
65G-4.017	Establishing Eligibility

**NOTICE OF PUBLIC HEARING**

The Agency for Persons with Disabilities announces a hearing regarding the above rule, as noticed in Vol. 37, No. 44, November 4, 2011 Florida Administrative Weekly.

DATE AND TIME: Thursday, December 1, 2011, 9:00 a.m. – 11:00 a.m.

PLACE: Agency for Persons with Disabilities, 4030 Esplanade Way, Room 301, Tallahassee, Florida 32399

GENERAL SUBJECT MATTER TO BE CONSIDERED: Process and criteria for determining eligibility for services provided to persons with developmental disabilities.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Terri McGarrity, Senior Management Analyst Supervisor, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)414-7452. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

**DEPARTMENT OF FINANCIAL SERVICES**

**Division of Worker’s Compensation**

RULE NO.:	RULE TITLE:
69L-9.015	Drug Testing Criteria

**NOTICE OF CORRECTION**

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 37, No. 36, September 9, 2011 issue of the Florida Administrative Weekly.

The Notice of Proposed Rule, as advertised on September 9, 2011, did not fully address information that should have been included under the Summary of Statement of Estimated Regulatory Costs and Legislative Ratification.

The following language is inserted under the Summary of Statement of Estimated Regulatory Costs and Legislative Ratification: The Department has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Department has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described

herein: The Department neither uses nor relies on Rule 69L-9.015, F.A.C., and lacks the rulemaking authority necessary to retain it. The rule is an artifact of the multiple reorganizations made to State of Florida’s government agencies that have occurred over the years. The rule was inadvertently transferred to the Department in 2003. The text of Rule 69L-9.015, F.A.C., is limited to a statement incorporating Agency for Health Care Administration (AHCA) Rule 59A-24.006, F.A.C., by reference. Given that Rule 59A-24.006 is actively administered under a grant of rulemaking authority provided to AHCA, the repeal of Rule 69L-9.015 will not result in any economic impact and will therefore not be subject to legislative ratification.

**Section IV  
Emergency Rules**

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NO.:	RULE TITLE:
12BER11-17	Tax on Transfers of Ownership Interest in Legal Entities

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Chapter 2009-131, Laws of Florida, authorizes the Department to promulgate an emergency rule, and to renew such rule, to implement the provisions of the law. The law provides that conditions necessary for an emergency rule and its renewal have been met. Section 201.02(1)(b), F.S., provides for the imposition of tax on transfers of ownership interest in a conduit entity when the transfer is within three years of a transfer of Florida real property into the conduit entity, documentary stamp tax was not paid on the full consideration when the real property was transferred into the conduit entity, and the ownership interest transferred belonged to the grantor of the real property. This emergency rule provides how the tax is imposed, when the tax is due, and examples of transfers of real property that would be subject to the tax.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of an emergency rule, and the renewal of such rule, to implement Chapter 2009-131, Laws of Florida, and determined that all conditions necessary for this emergency rule have been met. This law imposes a tax on the transfer of a grantor’s ownership interest in a conduit entity when the grantor conveyed real property to the conduit entity without having paid tax on the full consideration for the real property and the transfer is within three years after the grantor conveyed the real property to the conduit entity.

SUMMARY: Emergency Rule 12BER11-17 (Tax on Transfers of Ownership Interest in Legal Entities), provides for the application of tax to transfers of a grantor’s ownership interest

in a conduit entity after the grantor has conveyed real property to the conduit entity without having paid tax on the full consideration for the real property. This emergency rule: (1) provides when the tax is imposed under Section 201.02(1)(b), F.S., as amended by Chapter 2009-131, L.O.F., how the tax is computed, and when the tax is due; (2) provides definitions of the terms "conduit entity" and "full consideration"; and (3) provides examples of transfers of real property that would be subject to the tax.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Tim Phillips, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7224

THE FULL TEXT OF THE EMERGENCY RULE IS:

12BER11-17 Tax on Transfers of Ownership Interest in Legal Entities.

(1)(a) Scope. This rule applies to transfers of a grantor's ownership interest in a conduit entity after the grantor has conveyed real property to the conduit entity without having paid tax on the full consideration for the real property.

(b) Definitions. For purposes of this rule:

1. "Conduit entity" means a legal entity to which real property is conveyed without full consideration by a grantor who owns a direct or indirect interest in the entity or a successor entity.

2. "Full consideration" means the consideration that would be paid in an arm's length transaction between unrelated parties.

(2) When a grantor conveys real property to a conduit entity without tax being paid on full consideration and all or a portion of the grantor's ownership interest, either direct or indirect, is subsequently transferred for consideration within 3 years after the grantor conveyed the real property to the conduit entity, the transfer of the grantor's ownership interest in the conduit entity is subject to tax.

(3) The tax is based on the consideration paid or given for the grantor's ownership interest in the conduit entity. The tax rate is 70 cents for each \$100 or fraction thereof of the consideration. If the conduit entity owns assets other than the real property described in subsection (2), tax is calculated by multiplying the consideration for the interest in the conduit entity by a fraction, the numerator of which is the value of the real property described in subsection (2) and the denominator of which is the value of all assets owned by the conduit entity, and then multiplying the result by the tax rate.

(4) A gift of an ownership interest in a conduit entity is not subject to tax to the extent there is no consideration.

(5) The transfer of shares or similar equity interests that are dealt in or traded on public, regulated security exchanges is not subject to the tax.

(6) The tax is to be paid pursuant to Section 201.133, F.S., on the earliest of the 20th day of the month following the month the ownership interest is transferred or the date that an instrument evidencing the transfer is filed or recorded in Florida.

(7) The provisions of this rule do not affect the imposition of tax on transactions described in Section 201.02(4), F.S.

(8) Examples.

(a) Example 1: On July 2, 2009, Lloyd transferred Florida real property (the real property), owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 3, 2009, Lloyd transferred his interest in the LLC for \$1,000,000. The LLC owned no assets other than the real property. Documentary stamp tax of \$7,000.00 was due on the transfer of Lloyd's ownership interest in the LLC based on the \$1,000,000 consideration, since Lloyd was the grantor of the real property and since tax was not paid on full consideration when the real property was transferred to the LLC.

(b) Example 2: On July 2, 2009, Calvin and Sally transferred Florida real property (the real property) which they owned jointly, to a limited liability company (LLC) owned equally by Calvin and Sally. The full consideration at the time of the transfer would have been \$30,000. Documentary stamp tax of \$210 was paid on the document that transferred the real property to the LLC. On July 10, 2009, Calvin and Sally sold their ownership interests in the LLC for \$35,000. The only asset owned by the LLC at the time was the real property. No documentary stamp tax was due on the transfer of Calvin and Sally's ownership interests in the LLC, since tax was paid on the full consideration for the real property when it was transferred to the LLC.

(c) Example 3: On July 2, 2009, Vern and Carol transferred Florida real property (the real property) which they owned jointly, to a limited liability company (LLC) owned equally by Vern and Carol. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Vern sold his interest in the LLC for \$200,000. Tax of \$1400 was due on the transfer of Vern's ownership interest in the LLC, since Vern was a grantor of the real property and since tax was not paid on full consideration for the real property when it was transferred to the LLC.

(d) Example 4: On July 2, 2009, Pam and Mike transferred Florida real property (the real property) which they owned jointly, to a corporation. The corporation was owned equally by Mike and a limited liability company (LLC) owned by Pam alone. No documentary stamp tax was paid on the document that transferred the real property to the corporation. On July 10, 2009, Pam sold her interest in the LLC (thereby selling her indirect ownership interest in the corporation) for \$45,000. The corporation owned property in addition to the real property transferred to it on July 2, 2009. Full consideration for the real

property would have been \$85,000, and the real property made up 95% of the value of all assets owned by the corporation. The only asset owned by the LLC was its interest in the corporation. Tax of \$299.60 was due on the transfer of Pam's ownership interest based on consideration of \$42,750 (\$45,000.00 multiplied by the 95% attributable to the real property), since Pam was the grantor of the real property and since tax was not paid on full consideration for the real property when it was transferred to the corporation.

(e) Example 5: On July 2, 2009, Tom transferred Florida real property (the real property) owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Tom sold 50% of his interest in the LLC to Imogene for \$200,000. Tax of \$1,400 was due on the transfer of Tom's ownership interest in the LLC based on consideration of \$200,000, since documentary stamp tax was not paid on full consideration for the real property when it was transferred to the LLC. On July 25, 2009, Tom sold one-half of his remaining 50% ownership interest in the LLC for \$105,000, and Imogene sold one-half of her 50% ownership interest in the LLC for \$105,000. Tax of \$735 was due on the transfer of Tom's ownership interest, since Tom was the grantor of the real property and since tax was not paid on the fair market value of the real property when it was transferred to the LLC. No tax was due on Imogene's transfer, since Imogene was not a grantor of the real property.

Rulemaking Authority s. 6, Ch. 2009-131, L.O.F. Law Implemented Ch. 2009-131, L.O.F. History—New 11-3-11.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: November 3, 2011

## Section V Petitions and Dispositions Regarding Rule Variance or Waiver

### DEPARTMENT OF COMMUNITY AFFAIRS

The Department of Economic Opportunity issued an Order Granting Waiver on October 25, 2011.

NAME OF THE PETITIONER: City of Inverness, Florida, DCA11-WAI-176

DATE PETITION WAS FILED: August 22, 2011

RULE NUMBER AND NATURE OF THE RULE FROM WHICH THE WAIVER OR VARIANCE IS SOUGHT: Subsection 9B-43.0051(7), Florida Administrative Code.

THE GENERAL BASIS FOR THE DECISION:

The petition sought a waiver of the twenty-five point penalty imposed upon the City under the Small Cities Community Development Block Grant Program by subsection 9B-43.0051(7), Florida Administrative Code, for failure to timely file an audit. The waiver was granted because the City had timely prepared the audit and timely filed it in other venues.

A copy of the Order or additional information may be obtained by contacting: Miriam Snipes, Agency Clerk, Department of Economic Opportunity, 107 E. Madison St., MSC 110, Tallahassee, FL 32399.

### DEPARTMENT OF LAW ENFORCEMENT

The Criminal Justice Standards and Training Commission hereby gives notice that on October 27, 2011, the Criminal Justice Standards and Training Commission has issued an order on September 21, 2011, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., by the Atlantis Police Department on behalf of one officer for the 2008 and 2010 firearms requalification periods. Subsection 11B-27.00212(14), F.A.C., requires officers to requalify with a firearm under the supervision of a CJSTC-certified firearms instructor every two years on a course of fire mandated by Commission rule. Notice of receipt of the petition was published in the Florida Administrative Weekly Vol. 37, No. 39, September 30, 2011.

The petition supported the requested waiver by stating that the officer at issue is a CJSTC-certified firearms instructor and that he did successfully complete the course of fire, however, he signed his own CJSTC form 86A. Petitioner stated that the officer will suffer a substantial hardship if his certification were rendered inactive as a result of this situation. Petitioner further stated that it would violate the principles of fairness to fail to recognize that the officer did successfully complete the requirement simply because he signed his own CJSTC form 86A for the 2010 reporting cycle.

On October 27, 2011, at its regularly scheduled business agenda meeting held in Ponte Vedra Beach, Florida, the Commission found that the Petitioner's situation is unique. The Petitioner demonstrated that the strict application of the Commission's rules in this case would violate the principles of fairness. The Petitioner's officer had, in fact, completed the Commission's course of fire and achieved a passing score. The only deficiency in the officer's firearms requalifications was that the Petitioner's officer is a CJSTC-certified firearms instructor and that he signed his own form CJSTC 86A. The Commission found that the purposes of the underlying statute, to ensure that officers receive adequate and timely retraining, will be met by granting this waiver request. The Commission granted the Petitioner's waiver.